

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18944.2. Gifts to an Agency.**

(a) Applicability. This regulation sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.

(b) Definitions.

(1) "Payment" means a payment as defined in Section 82044 and includes a monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or provision of, goods or services to an agency.

(2) "Agency head" means an individual in whom the ultimate legal authority of an agency is vested, or who has been delegated authority to make determinations by the agency for purposes of this regulation.

(c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as defined in Section 82028, shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met:

(1) Agency Controls Use of Payment. The agency head, or his or her designee, determines and controls the agency's use of the payment. The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment. If the payment will provide a personal benefit to an official, the agency head, or his or her designee, shall select the individual

who will use it. The agency official who determines and controls the agency's use of the payment may not select himself or herself as the individual who will use the payment.

(2) Official Agency Business. The payment must be used for official agency business.

(3) Agency Reports the Gift. Within 30 days after use of the payment, the agency reports the payment on a form prescribed by the Commission that includes the following information:

(A) A description of the payment, the date received, the intended purpose, and the amount of the payment (or the actual or estimated value of the goods or services provided).

(B) The name and address of the donor. If the donor is not an individual, the report shall also describe the business activity, or the nature and interests of the entity. If the donor has raised funds from other persons for the specific purpose of making the payment to the agency, the report shall contain the names of and amounts given by these persons.

(C) The agency's use of the payment, and the name, title, and department of the agency official for whom the payment was used. The report shall include the date(s) and place(s) of travel, and a breakdown of the total expenses for transportation, lodging, meals and other related expenses.

(D) The form is signed by the agency head, or his or her designee, and maintained by the agency as a public record subject to inspection and copying under Section 81008(a).

(E) A state agency shall provide the completed form to the Commission (or in the case of the Commission to the office of the Attorney General), within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. If the state agency maintains a website, the state agency shall also post a copy of the form or the information in the form on its website in a prominent fashion within 30 days after use of the payment. If the state agency does not maintain a website, the Commission shall post a copy of the form or the information in the form on its website.

(F) A local agency shall provide the completed form to the filing officer who receives the agency employees' statements of economic interests, within 30 days after use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing officer shall post a copy of the form or the information in the form on its website, or if it does not maintain a website, shall provide a copy of the form to the Commission which shall post the information on its website.

(G) The individual in the agency who has official custody of these forms is the filing officer for the forms, keeps a log of the forms under both the name of the agency and official receiving the payment, and maintains the forms for a period of not less than four years.

(d) Limitations on Application of this Regulation. The exception provided in subdivision (c) does not apply to the following payments:

(1) A payment for travel, including transportation, lodging, and meals, for a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200.

(2) A payment for travel to the extent that it exceeds the agency's reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses, or if the agency has no standard policy or practice concerning reimbursement rates, the State per diem rates as set forth in applicable sections of the State Administrative Manual and Department of Personnel Administration regulations, or the Internal Revenue Service rates for reimbursement of these expenses as set forth in the U.S. General Service Administration's website under "Per Diem Rates" and Internal Revenue Service Publications 463 and 1542, or their successors.

(3) A payment for travel that the agency head, or his or her designee, has not preapproved in writing in advance of the date of the trip.

(4) Passes or tickets, as described in Regulation 18944.1, which shall be governed by that regulation.

(e) Public Colleges and University Research Projects. Notwithstanding this regulation, a donation to a California public college or university for a specific research project that is received consistent with the requirements of Regulation 18702.4(c) or a meal received in the course of the college's or university's official fundraising activity, which qualifies under federal and state law for a deduction as a charitable contribution for educational purposes, will be deemed a gift to the college or university.

(f) Payments from the Federal Government. Notwithstanding this regulation, a grant, reimbursement, funding, or other payment received by a state or local government agency from a federal government agency for education, training, or other inter-agency programs, will not be considered a gift to the public official who receives a personal benefit from the payment.

Comments:

1. Acceptance of a pass or discount from a transportation company by a public officer, other than a Public Utilities Commissioner, may result in forfeiture of the official's office pursuant to Article XII, Section 7 of the California Constitution.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501-89506, Government Code.

HISTORY

1. New section filed 6-22-94; operative 6-22-94 (Register 94, No. 25).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Change without regulatory effect amending Note filed 7-27-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 30).
4. Change without regulatory effect amending subsection (b) filed 7-18-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 29).
5. Repealer and new section filed 6-11-2008; operative 7-1-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2008, No. 24).